

1 SENATE BILL 334

2 **50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011**

3 INTRODUCED BY

4 Timothy Z. Jennings

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10 AN ACT

11 RELATING TO DISABLED AND ELDERLY RESIDENTIAL SERVICES;
12 REQUIRING THAT OWNERS OR OPERATORS OF ADULT RESIDENTIAL CARE
13 FACILITIES PROVIDE THE SECRETARY OF HEALTH WITH CERTAIN
14 DISCLOSURES AS A CONDITION OF LICENSING OR RENEWAL OF
15 LICENSURE; PROVIDING FOR DENIAL OF ADULT RESIDENTIAL FACILITY
16 LICENSURE FOR PRIOR CRIMINAL ACTS OR CIVIL VIOLATIONS BY OWNERS
17 OR OPERATORS; REQUIRING SUPPORTIVE RESIDENCES TO BE CERTIFIED
18 BY AND MAKE CERTAIN DISCLOSURES TO THE AGING AND LONG-TERM
19 SERVICES DEPARTMENT; PROVIDING FOR DENIAL OF SUPPORTIVE
20 RESIDENCE CERTIFICATION FOR PRIOR CRIMINAL ACTS OR CIVIL
21 VIOLATIONS BY OWNERS OR OPERATORS.

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23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

24 SECTION 1. A new section of the Public Health Act is
25 enacted to read:

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1 "[NEW MATERIAL] ADULT RESIDENTIAL CARE FACILITIES--
2 DISCLOSURES--BACKGROUND INVESTIGATIONS--CONDITION OF
3 LICENSING.--

4 A. In addition to ensuring that an adult
5 residential care facility meets the requirements of Section
6 24-1-5 NMSA 1978, the department shall license an adult
7 residential care facility or renew its license only if the
8 adult residential care facility provides the department with a
9 current annual disclosure statement that includes the following
10 information:

11 (1) the name and business address of the adult
12 residential care facility;

13 (2) if the adult residential care facility is
14 owned or operated by a partnership, corporation or association,
15 the names, addresses and, at the facility's expense, criminal
16 background checks of the owner or operator and any of its
17 officers, directors, trustees, partners, managers and
18 affiliates. The department shall deny a license to an adult
19 residential care facility if the facility owner or operator or
20 any of its officers, directors, trustees, partners, managers or
21 affiliates, within ten years prior to the date of application:

22 (a) was convicted of a felony, a crime
23 that if committed in New Mexico would be a felony or any crime
24 having to do with the provision of long-term or adult
25 residential facility care;

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1 (b) has been held liable or enjoined in
2 a civil action in any jurisdiction by final judgment, if the
3 civil action involved fraud, embezzlement, fraudulent
4 conversion or misappropriation of property; or

5 (c) had a state or federal license or
6 permit to operate an adult residential care facility suspended
7 or revoked or had any state or federal agency or industry
8 regulatory agency commence an action against the adult
9 residential care facility owner or operator or any of its
10 officers, directors, trustees, partners, managers or affiliates
11 and the result of such action;

12 (3) a credit history for the adult residential
13 care facility owner or operator and, if it is a corporation,
14 partnership or association, a credit history for each of its
15 officers, directors, trustees, partners, managers and
16 affiliates, and in the event that any of these persons has had
17 a prior discharge in bankruptcy or was found insolvent in any
18 court action, the adult residential care facility shall provide
19 to the secretary of health proof that each of the persons
20 responsible for conducting the affairs of the adult residential
21 care facility is covered under an individual or blanket
22 fidelity bond in the amount of one million dollars (\$1,000,000)
23 and that the bond has been filed with and approved by the
24 insurance division of the public regulation commission;

25 (4) a statement as to whether the adult

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1 residential care facility owner or operator is, or is
2 associated with another entity that is, responsible for the
3 financial and contractual obligations of the adult residential
4 care facility owner or operator, and the extent to which the
5 associate entity is responsible;

6 (5) the location and description of any adult
7 residential care facilities or other long-term services
8 facilities that the adult residential care facility owner or
9 operator, or an associated entity, operates or owns any
10 interest;

11 (6) a statement as to the adult residential
12 care facility owner or operator's liquid reserves, including a
13 description of the adult residential care facility owner or
14 operator's reserves to assure payment of debt obligations and
15 an ongoing ability to provide services to residents;

16 (7) an audited financial statement and an
17 audit report prepared in accordance with generally accepted
18 accounting principles applied on a consistent basis and
19 certified by a certified public accountant, including an income
20 statement or statement of activities, a cash-flow statement or
21 sources and application of funds statement and a balance sheet
22 as of the end of the adult residential care facility's last
23 fiscal year. The balance sheet should accurately reflect the
24 deferred revenue balance, including entrance fees and any other
25 prepaid services, and should include notes describing the adult

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1 residential care facility owner or operator's long-term
2 obligations and identifying all the holders of mortgages and
3 notes;

4 (8) if the adult residential care facility
5 owner or operator is a corporation, a copy of the articles of
6 incorporation; if the adult residential care facility owner or
7 operator is a partnership or other unincorporated association,
8 a copy of the partnership agreement, articles of association or
9 other membership agreement; and if the adult residential care
10 facility owner or operator is a trust, a copy of the trust
11 agreement or instruments;

12 (9) resumes of the adult residential care
13 facility owner or operator's officers, directors, trustees,
14 partners or managers;

15 (10) a copy of the adult residential care
16 facility's policies and procedures; and

17 (11) other data, financial statements and
18 pertinent information with respect to the adult residential
19 care facility, or its directors, trustees, members, managers,
20 branches, subsidiaries or affiliates, that the secretary of
21 health requests and that is reasonably necessary in order for
22 the secretary to determine the financial status of the adult
23 residential care facility and the management capabilities of
24 the facility owner or operator, including the most recent
25 audited financial statements of comparable adult residential

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1 care facilities owned, managed or developed by the adult
2 residential care facility owner or operator.

3 B. The secretary may deny a license or renewal of a
4 license after a finding based upon substantial evidence that an
5 adult residential care facility's owner or operator, or if
6 owned or operated by a partnership, corporation or association,
7 an officer, a director, a trustee, a partner, a manager or an
8 affiliate of that entity, has engaged in a pattern or practice
9 of civil violations related to fraudulent acts or resident
10 health, safety or quality of life.

11 C. As used in this section, "adult residential care
12 facility" means:

13 (1) any adult care facility institution
14 required to be licensed under state law as an adult residential
15 care facility by the public health division of the department
16 of health, whether proprietary or nonprofit, including skilled
17 long-term care facilities; or

18 (2) a facility that is licensed by the
19 department of health as an assisted living facility."

20 SECTION 2. [NEW MATERIAL] DISABLED AND ELDERLY
21 RESIDENCES--DISCLOSURES--BACKGROUND INVESTIGATIONS--
22 CERTIFICATION.--

23 A. The secretary of aging and long-term services
24 shall promulgate rules in accordance with this section for the
25 certification of supportive residences in the state and provide

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1 guidelines regarding the operation of supportive residences in
2 a manner that provides quality living environments and greater
3 protection from abuse, fraud and exploitation for residents of
4 supportive residences. A supportive residence shall not
5 operate in the state unless it receives certification from the
6 aging and long-term services department and renews that
7 certification annually. The aging and long-term services
8 department may certify a supportive residence only if it
9 provides the department with an annual disclosure statement
10 that includes the information set forth in Subsection B of this
11 section and the supportive residence is in compliance with this
12 section and department rules for the safe operation of
13 supportive residences. The department shall deny certification
14 if the supportive residence's owner or operator or any of its
15 officers, directors, trustees, partners, managers or
16 affiliates, within ten years prior to the date of application:

17 (1) was convicted of a felony, a crime that if
18 committed in New Mexico would be a felony or any crime having
19 to do with the provision of care to disabled individuals or
20 individuals over the age of fifty-five;

21 (2) has been held liable or enjoined in a
22 civil action in any jurisdiction by final judgment, if the
23 civil action involved fraud, embezzlement, fraudulent
24 conversion or misappropriation of property; or

25 (3) had a state or federal license or permit

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1 to operate a business suspended or revoked or had any state,
2 federal or industry self-regulatory agency commence an action
3 against the supportive residence owner or operator or any of
4 its officers, directors, trustees, partners, managers or
5 affiliates and the result of such action.

6 B. To comply with annual disclosure statement
7 requirements pursuant to Subsection A of this section, a
8 supportive residence owner or operator shall submit to the
9 aging and long-term services department:

10 (1) the name and business address of the
11 supportive residence;

12 (2) if the supportive residence is owned or
13 operated by a partnership, corporation or association, the
14 names, addresses and, at the supportive residence's expense,
15 criminal background checks of the owner or operator and any of
16 its officers, directors, trustees, partners, managers and
17 affiliates;

18 (3) a credit history for the supportive
19 residence owner or operator and, if it is a corporation,
20 partnership or association, a credit history for each of its
21 officers, directors, trustees, partners, managers and
22 affiliates, and in the event that any of these persons has had
23 a prior discharge in bankruptcy or was found insolvent in any
24 court action, the supportive residence shall provide to the
25 secretary of aging and long-term services proof that each of

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1 the persons responsible for conducting the affairs of the
2 supportive residence is covered under an individual or blanket
3 fidelity bond in the amount of one million dollars (\$1,000,000)
4 and that the bond has been filed with and approved by the
5 insurance division of the public regulation commission;

6 (4) a statement as to whether the supportive
7 residence owner or operator is, or is associated with another
8 entity that is, responsible for the financial and contractual
9 obligations of the supportive residence owner or operator, and
10 the extent to which the associate entity is responsible;

11 (5) the location and description of any
12 supportive residences or other long-term services facilities
13 that the supportive residence owner or operator, or an
14 associated entity, operates or owns any interest;

15 (6) a statement as to the supportive residence
16 owner or operator's liquid reserves, including a description of
17 the supportive residence owner or operator's reserves to assure
18 payment of debt obligations and an ongoing ability to provide
19 services to residents;

20 (7) an audited financial statement and an
21 audit report prepared in accordance with generally accepted
22 accounting principles applied on a consistent basis and
23 certified by a certified public accountant, including an income
24 statement or statement of activities, a cash-flow statement or
25 sources and application of funds statement and a balance sheet

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1 as of the end of the supportive residence's last fiscal year.
2 The balance sheet should accurately reflect the deferred
3 revenue balance, including entrance fees and any other prepaid
4 services, and should include notes describing the supportive
5 residence owner or operator's long-term obligations and
6 identifying all the holders of mortgages and notes;

7 (8) if the supportive residence owner or
8 operator is a corporation, a copy of the articles of
9 incorporation; if the supportive residence owner or operator is
10 a partnership or other unincorporated association, a copy of
11 the partnership agreement, articles of association or other
12 membership agreement; and if the supportive residence owner or
13 operator is a trust, a copy of the trust agreement or
14 instruments;

15 (9) resumes of the supportive residence owner
16 or operator's officers, directors, trustees, partners or
17 managers;

18 (10) a copy of the supportive residence's
19 policies and procedures; and

20 (11) other data, financial statements and
21 pertinent information with respect to the supportive residence,
22 or its directors, trustees, members, managers, branches,
23 subsidiaries or affiliates, that the secretary of aging and
24 long-term services requests and that is reasonably necessary in
25 order for the secretary to determine the financial status of

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1 the supportive residence and the management capabilities of the
2 supportive residence owner or operator, including the most
3 recent audited financial statements of comparable supportive
4 residences owned, managed or developed by the supportive
5 residence owner or operator.

6 C. A supportive residence owner or operator shall
7 file a copy of the disclosure statement and any amendments to
8 that statement with the aging and long-term services department
9 for public inspection during regular working hours.

10 D. The secretary may deny a license or renewal of a
11 license after a finding based upon substantial evidence that a
12 supportive residence's owner or operator, or if owned or
13 operated by a partnership, corporation or association, an
14 officer, a director, a trustee, a partner, a manager or an
15 affiliate of that entity, has engaged in a pattern or practice
16 of civil violations related to fraudulent acts or resident
17 health, safety or quality of life.

18 E. For the purposes of this section:

19 (1) "operator" means a person that carries out
20 the daily administration, management and maintenance for the
21 actual operation of an enhanced recovery project;

22 (2) "owner" means one or more persons, jointly
23 or severally, in whom is vested:

24 (a) all or part of the legal title to
25 property, but shall not include the limited partner in an

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1 association regulated under the Uniform Limited Partnership
2 Act; or

3 (b) all or part of the beneficial
4 ownership and a right to present use and enjoyment of the
5 premises and agents thereof and includes a mortgagee in
6 possession and the lessors, but shall not include a person or
7 persons, jointly or severally, who as owner leases the entire
8 premises to a lessee of vacant land for apartment use;

9 (3) "residence" means:

10 (a) an affordable housing development
11 built to benefit individuals whose income is at or below eighty
12 percent of the area median income; and who will pay no more
13 than thirty percent of their gross monthly income for the
14 housing;

15 (b) a complex of dwelling units
16 regulated pursuant to the provisions of the Uniform
17 Owner-Resident Relations Act;

18 (c) a mobile home park regulated
19 pursuant to the provisions of the Mobile Home Park Act; and

20 (d) a development of condominiums or
21 leasehold condominiums regulated pursuant to the provisions of
22 the Condominium Act; and

23 (4) "supportive residence" means a residence
24 that:

25 (a) operates as a residence exclusively

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1 for disabled individuals or individuals over the age of fifty-
2 five;

3 (b) provides on-site attendant, medical,
4 meal or housekeeping services pursuant to a lease or other
5 agreement; and

6 (c) has twenty or more dwelling units;
7 "supportive residence" does not include a residence regulated
8 pursuant to the provisions of the Continuing Care Act or a
9 residence operated by its resident owners.